

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

**Proposing rule making related to workforce housing tax incentives program
and providing an opportunity for public comment**

The Economic Development Authority (IEDA) hereby proposes to amend Chapter 48, “Workforce Housing Tax Incentives Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 15.106A and 15.336.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, Senate File 2325.

Purpose and Summary

2022 Iowa Acts, Senate File 2325, amends Iowa Code sections 15.352, 15.353, and 15.354 relating to the Workforce Housing Tax Incentives Program. The proposed amendments make the following changes to the program: (1) amend the definition of “small city” and add a corresponding definition of “urban area,” (2) allow the IEDA Board to set maximum average dwelling unit costs for different project types based on the United States Census Bureau building permit survey and historical program data, (3) allow IEDA to approve a second extension of a project’s completion deadline of up to 12 months, and (4) allow projects that exceed the maximum average dwelling unit costs by up to 150 percent to receive a reduced tax incentive award (raised from 110 percent).

Except for the section relating to extensions, which was effective as of March 23, 2022, the sections of the legislation relating to the Program apply retroactively to July 1, 2021, regarding all eligible housing businesses that have not been notified of the amount the business may claim as a refund of the sales and use tax or have not been issued a tax credit certificate.

The proposed amendments reflect the changes made to the Iowa Code.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by IEDA no later than 4:30 p.m. on July 5, 2022. Comments should be directed to:

Lisa Connell
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Des Moines, Iowa 50315
Phone: 515.348.6163
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Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind rule **261—48.1(15)**.

ITEM 2. Renumber rules **261—48.2(15)** and **261—48.3(15)** as **261—48.1(15)** and **261—48.2(15)**.

ITEM 3. Amend renumbered rule 261—48.1(15) as follows:

261—48.1(15) Purpose Authority and purpose. The workforce housing tax incentives program is administered pursuant to Iowa Code sections 15.351 to 15.356 and 2022 Iowa Acts, Senate File 2325, sections 7 to 13. The purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted at middle-income households and that focus on the redevelopment or repurposing of existing structures.

ITEM 4. Amend renumbered rule 261—48.2(15) as follows:

261—48.2(15) Definitions. As used in this chapter, unless the context otherwise requires:

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Average dwelling unit cost*” means the costs directly related to the housing project divided by the total number of dwelling units in the housing project.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Brownfield site*” means an abandoned, idled, or underutilized property where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the site on which the property is located. A brownfield site does not include property which has been placed, or is proposed for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. In order to administer similar programs in a similar manner, the authority will attempt to apply this definition in substantially the same way as similar definitions are applied by the brownfield advisory council established in Iowa Code section 15.294 and may consult members of the council or other staff as necessary.

“*Community*” means a city or county.

“*Costs directly related*” means expenditures that are incurred for construction of a housing project to the extent that they are attributable directly to the improvement of the property or its structures.

“Costs directly related” includes expenditures for site preparation work, surveying, construction materials, construction labor, architectural services, and engineering services. “Costs directly related” does not include expenditures for property acquisition, building permits, building inspection fees, furnishings, appliances, accounting services, legal services, loan origination and other financing costs including interest on construction loans, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

“*Disaster recovery housing project*” means a qualified housing project located in a county that has been declared a major disaster by the President of the United States on or after March 12, 2019, and that is also a county in which individuals are eligible for federal individual assistance.

“*Grayfield site*” means a property meeting all of the following requirements:

(1) The property has been developed and has infrastructure in place but the property’s current use is outdated or prevents a better or more efficient use of the property. Such property includes vacant, blighted, obsolete, or otherwise underutilized property.

(2) The property’s improvements and infrastructure are at least 25 years old and one or more of the following conditions exists:

1. Thirty percent or more of a building located on the property that is available for occupancy has been vacant or unoccupied for a period of 12 months or more.

2. The assessed value of the improvements on the property has decreased by 25 percent or more.

3. The property is currently being used as a parking lot.

4. The improvements on the property no longer exist.

In administering the program, the authority will attempt to apply this definition in substantially the same manner as similar definitions are applied by the brownfield advisory council established in Iowa Code section 15.294.

“*Greenfield site*” means a site that does not meet the definition of a brownfield site or grayfield site. A project proposed at a site located on previously undeveloped or agricultural land shall be presumed to be a greenfield site.

“*Housing business*” means a business that is a housing developer, housing contractor, or nonprofit organization that completes a housing project in the state.

“*Housing project*” means a project located in this state meeting the requirements of rule 261—48.4(15).

“*Laborshed area*” means the same as defined in 261—Chapter 173.

“*Laborshed wage*” means the same as defined in 261—Chapter 173.

“*Multi-use building*” means a building whose street-level ground story is used for a purpose that is other than residential, and whose upper story or stories are currently used primarily for a residential purpose, or will be used primarily for a residential purpose after completion of the housing project associated with the building.

“*New dwelling units*” means dwelling units that are made available for occupancy in a community as a result of a housing project and that were not available for occupancy as residential housing in the community for a period of at least six months prior to the date on which application is made to the authority under the program. If a dwelling unit has served as residential housing and been occupied during the six months preceding the date on which application is made to the authority under the program, then the dwelling unit shall be presumed not to be a new dwelling unit.

“*Program*” means the workforce housing tax incentives program administered under this chapter.

“*Project completion*” means the same as defined in Iowa Code section 15.355(2).

“*Qualifying new investment*” means costs that are directly related to the acquisition, repair, rehabilitation, or redevelopment of a housing project in this state. For purposes of this rule, “costs directly related to acquisition” includes the costs associated with the purchase of real property or other structures.

~~(1) “Qualifying new investment” includes costs that are directly related to new construction of dwelling units if the new construction occurs in a distressed workforce housing community.~~

~~(2)~~ (1) The amount of costs that may be used to compute “qualifying new investment” shall not exceed the costs used for the first \$150,000 of value for each dwelling unit that is part of a housing project.

~~(3)~~ (2) “Qualifying new investment” does not include the following:

1. The portion of the total cost of a housing project that is financed by federal, state, or local government tax credits, grants, forgivable loans, or other forms of financial assistance that do not require repayment, excluding the tax incentives provided under this program.

2. If a housing project includes the rehabilitation, repair, or redevelopment of an existing multi-use building, the portion of the total acquisition costs of the multi-use building, including a proportionate share of the total acquisition costs of the land upon which the multi-use building is situated, that are attributable to the street-level ground story that is used for a purpose that is other than residential.

3. Any costs, including acquisition costs, incurred before the housing project is approved by the authority.

“Refund notice” means a notice provided by the authority of the amount that an eligible housing business may claim as a refund of the sales and use tax under Iowa Code section 15.355(2).

“Rehabilitation, repair, or redevelopment” means construction or development activities associated with a housing project that are undertaken for the purpose of reusing or repurposing existing buildings or structures as new dwelling units. Rehabilitation, repair, or redevelopment does not include new construction of dwelling units at a greenfield site. Rehabilitation, repair, or redevelopment includes new structures at a qualified grayfield site.

“Small city” means ~~any city or township located in this state, except those located wholly within one or more of the 11 most populous counties in the state, as determined by the most recent population estimates issued by the United States Bureau of Census~~ a city that meets the applicable criteria in rule 261—48.3(15).

“Tax credit certificate” means a certificate issued by the authority stating the amount of workforce housing investment tax credits under Iowa Code section 15.355(3) an eligible housing business may claim.

“Urban area” means any city or township, except for a small city, that is wholly located within 1 or more of the 11 most populous counties in the state, as determined by either the most recent population estimate produced by the United States Bureau of Census or the most recent decennial census released by the United States Bureau of Census.

ITEM 5. Adopt the following new rule 261—48.3(15):

261—48.3(15) Small cities. For the purposes of this chapter, the following subrules will determine which cities and townships will be considered small cities.

48.3(1) For projects that received a refund notice or tax credit certificate on or before June 30, 2021, a small city is any city or township located in this state, except those located wholly within 1 or more of the 11 most populous counties in the state, as determined by the most recent population estimates issued by the United States Bureau of Census.

48.3(2) For projects that received a refund notice or tax credit certificate on or after July 1, 2021, a small city is any city or township located in this state, except those located wholly within 1 or more of the 11 most populous counties in the state, as determined by either the most recent population estimate produced by the United States Bureau of Census or the most recent decennial census released by the United States Bureau of Census.

48.3(3) On or after July 1, 2021, any city or township located wholly within 1 or more of the 11 most populous counties in the state, as determined pursuant to subrule 48.3(2), may be considered a small city if the city meets all of the following requirements:

a. The city or township has a population less than or equal to 2,500 as determined by either the most recent population estimate produced by the United States Bureau of Census or the most recent decennial census released by the United States Bureau of Census.

b. The city or township had population growth of less than 30 percent as calculated by comparing the population in the most recent decennial census released by the United States Bureau of Census to the population in the decennial census released ten years prior.

ITEM 6. Amend subrule 48.4(1) as follows:

48.4(1) ~~Minimum requirements~~ *Eligible project types*. To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall meet all of the following requirements:

a. The project includes at least one of the following:

(1) Four or more single-family dwelling units, except for a project located in a small city, then two or more single-family dwelling units.

(2) One or more multiple dwelling unit buildings each containing three or more individual dwelling units.

(3) Two or more dwelling units located in the upper story of an existing multi-use building.

b. The project consists of any of the following:

(1) Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units.

(2) The rehabilitation, repair, or redevelopment of dilapidated dwelling units.

(3) The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.

~~(4) The new construction, rehabilitation, repair, or redevelopment of dwelling units in a distressed workforce housing community. The authority will determine whether a community is considered a distressed workforce housing community pursuant to subrule 48.4(2).~~

~~(5) (4) For a project located in a small city that meets the minimum housing project requirements under this subrule, development~~ Development ~~at a greenfield site, if the project meets the requirements of paragraph 48.4(1) "a" and is located in a small city. A project located in a small city is not required to complete the distressed workforce housing community application pursuant to subrule 48.4(2).~~

~~c. (1) Except as provided in subparagraphs (2) and (3) below, the average dwelling unit cost does not exceed \$200,000 per dwelling unit. For purposes of this rule, the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project.~~

~~(2) The average dwelling unit cost does not exceed \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment, or preservation of eligible property, as that term is defined in Iowa Code section 404A.1(8) "a."~~

~~(3) The average dwelling unit cost does not exceed \$215,000 per dwelling unit if the project is located in a small city.~~

~~d. c.~~ The dwelling units, when completed and made available for occupancy, meet the U.S. Department of Housing and Urban Development's housing quality standards and all applicable local safety standards.

~~e. d.~~ The project is not located in a 100-year floodplain.

ITEM 7. Rescind subrule 48.4(2) and adopt the following **new** subrule in lieu thereof:

48.4(2) *Maximum cost*. Except as provided in subrules 48.4(3) and 48.4(4) below, the average dwelling unit cost does not exceed the maximum amount established by the board for each fiscal year for the applicable project type and project location. The board shall establish the maximum average dwelling unit cost for the project types set forth in paragraphs 48.4(2) "a" through "d." In establishing each maximum average dwelling unit cost, the board shall primarily consider the most recent annual United States Bureau of Census building permits survey and historical program data.

a. Single-family dwelling units located in a small city.

b. Single-family dwelling units located in an urban area.

c. Multiple dwelling unit buildings located in a small city.

d. Multiple dwelling unit buildings located in an urban area.

ITEM 8. Rescind subrule 48.4(3) and adopt the following **new** subrule in lieu thereof:

48.4(3) Maximum cost for historic projects. If the project is a qualified rehabilitation project, as that term is defined in Iowa Code section 404A.1(8) “a,” the average dwelling unit cost shall not exceed 125 percent of the maximum average dwelling unit cost established by the board for the applicable project type and project location as provided in subrule 48.4(2).

ITEM 9. Adopt the following **new** subrule 48.4(4):

48.4(4) Maximum cost on or before June 30, 2021. For projects that received a refund notice or tax credit certificate on or before June 30, 2021, the average dwelling unit cost shall not exceed \$200,000 per dwelling unit. If the project involves the rehabilitation, repair, redevelopment, or preservation of eligible property, as that term is defined in Iowa Code section 404A.1(8) “a,” the average dwelling unit cost does not exceed \$250,000 per dwelling unit.

ITEM 10. Amend subrule 48.5(3) as follows:

48.5(3) Agreement and fees.

a. Upon receiving a tax incentive award for a housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the program. The agreement shall identify the tax incentive amount, the tax incentive award date, the project completion deadline and the total costs of the housing project.

b. The compliance cost fees imposed in Iowa Code section 15.330(12) shall apply to all agreements entered into under this program and shall be collected by the authority in the same manner and to the same extent as described in that provision.

c. Housing project completion deadline.

(1) Except as provided in subparagraph 48.5(3) “c”(2), a housing business shall complete its housing project within three years from the date the housing project is registered by the authority.

(2) The authority may for good cause within the discretion of the authority extend a housing project’s completion deadline ~~one~~ by up to 12 months upon application by the housing business, which application shall be made prior to the expiration of the three-year completion deadline in subparagraph 48.5(3) “c”(1) in the manner and form prescribed by the authority. The authority may approve a second extension of up to 12 months if prior to the expiration of the first 12-month extension the housing business applies and substantiates to the satisfaction of the authority that the second extension is warranted due to extenuating circumstances outside the control of the housing business. An application by a housing business shall be made in the manner and form prescribed by the authority.

d. Upon completion of a housing project, a housing business shall submit all of the following to the authority:

(1) An examination of the project in accordance with the American Institute of Certified Public Accountants’ statements on standards for attestation engagements, completed by a certified public accountant (CPA) authorized to practice in this state. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA’s professional judgment, the expenditures claimed are eligible pursuant to the agreement; Iowa Code chapter 15, subchapter II, part 17; and all rules adopted pursuant to Iowa Code chapter 15, subchapter II, part 17, in all material respects. Within ten business days of a request by the authority, the housing business shall make available to the authority the documents reviewed by the CPA unless good cause is shown.

(2) A statement of the final amount of qualifying new investment for the housing project.

(3) Any information the authority deems necessary to ensure compliance with the agreement signed by the housing business pursuant to paragraph 48.5(3) “a”; the requirements of Iowa Code chapter 15, subchapter II, part 17; and these rules and rules adopted by the department of revenue pursuant to Iowa Code section 15.356.

e. Upon review of the examination, verification of the amount of the qualifying new investment, and review of any other information submitted pursuant to subparagraph 48.5(3) “d”(3), the authority may notify the housing business of the amount that the housing business may claim as a refund of the

sales and use taxes under subrule 48.6(2) and may issue a tax credit certificate to the housing business stating the amount of workforce housing investment tax credits under rule 261—48.6(15) that the eligible housing business may claim. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

f. If, upon review of the examination in paragraph 48.5(3) “*d.*,” the authority determines that a housing project has incurred project costs in excess of the amount submitted in the application and identified in the agreement, the authority shall do one of the following for projects that received a refund notice or tax credit certificate on or after July 1, 2021:

(1) If the project costs do not cause the housing project’s average dwelling unit cost to exceed the applicable maximum amount authorized in ~~subrule 48.4(1)~~ rule 261—48.4(15), the authority may consider the agreement fulfilled and may issue a tax credit certificate.

(2) If the project costs cause the housing project’s average dwelling cost to exceed the applicable maximum amount authorized in ~~paragraph 48.4(1) “*e.*”~~ rule 261—48.4(15) but do not cause the average dwelling unit cost to exceed ~~110~~ 150 percent of such applicable amount, the authority shall reduce the tax incentive award and the corresponding amount of tax incentives the eligible project may claim under rule 261—48.6(15) by the same percentage that the housing project’s average dwelling cost exceeds the applicable maximum amount under ~~paragraph 48.4(1) “*e.*,”~~ rule 261—48.4(15), and such tax incentive reduction shall be reflected on the tax credit certificate. If the authority issues a certificate pursuant to this subrule, the department of revenue shall accept the certificate notwithstanding that the housing project’s average dwelling unit cost exceeds the maximum amount specified in ~~paragraph 48.4(1) “*e.*”~~ rule 261—48.4(15).

(3) If the project costs cause the housing project’s average dwelling unit cost to exceed ~~110~~ 150 percent of the applicable maximum amount authorized in ~~paragraph 48.4(1) “*e.*,”~~ rule 261—48.4(15), the authority shall determine the eligible housing business to be in default under the agreement, shall revoke the tax incentive award and shall not issue a tax credit certificate. The housing business shall not be allowed a refund of sales and use tax under rule 261—48.6(15).

ITEM 11. Amend rule 261—48.9(15) as follows:

261—48.9(15) Housing project minimum requirements. To receive disaster recovery housing tax incentives pursuant to the program, a proposed disaster recovery housing project shall meet all of the following requirements:

48.9(1) The project includes at least one of the following:

a. Four or more single-family dwelling units, except for a project located in a small city, then two or more single-family dwelling units.

b. One or more multiple dwelling unit buildings each containing three or more individual dwelling units.

c. Two or more dwelling units located in the upper story of an existing multi-use building.

48.9(2) The project consists of any of the following:

a. Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units.

b. The rehabilitation, repair, or redevelopment of dilapidated dwelling units.

c. The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.

~~*d.* The new construction, rehabilitation, repair, or redevelopment of dwelling units in a distressed workforce housing community. The authority will determine whether a community is considered a distressed workforce housing community pursuant to subrule 48.4(2).~~

~~*e.* *d.* For a project located in a small city that meets the minimum housing project requirements under this subrule, development at a greenfield site. A project located in a small city is not required to complete the distressed workforce housing community application pursuant to subrule 48.4(2).~~

f. e. For a disaster recovery housing project, development at a greenfield site.

~~48.9(3)~~ Except as provided in subrules 48.9(4) and 48.9(5) below, ~~the~~ The average dwelling unit cost does not exceed \$200,000 per dwelling unit. For purposes of this rule, the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project ~~the~~ the applicable maximum amount established by the board pursuant to rule 261—48.4(15).

~~48.9(4)~~ The average dwelling unit cost does not exceed \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment, or preservation of eligible property, as that term is defined in Iowa Code section 404A.1(8) “a.”

~~48.9(5)~~ The average dwelling unit cost does not exceed \$215,000 per dwelling unit if the project is located in a small city.

~~48.9(6)~~ ~~48.9(4)~~ The dwelling units, when completed and made available for occupancy, meet the U.S. Department of Housing and Urban Development’s housing quality standards and all applicable local safety standards.

~~48.9(7)~~ ~~48.9(5)~~ The project is not located in a 100-year floodplain.

ITEM 12. Amend subrule 48.10(3) as follows:

48.10(3) *Agreement and fees.*

a. Upon receipt of a tax incentive award to the disaster recovery housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the disaster recovery housing program. The agreement shall identify the tax incentive award amount, the tax incentive award date, the project completion deadline, and the total costs of the disaster recovery housing project.

b. The compliance cost fees imposed in Iowa Code section 15.330(12) shall apply to all agreements entered into under the program and shall be collected by the authority in the same manner and to the same extent as described in Iowa Code section 15.330(12).

c. A housing business shall complete its disaster recovery housing project within three years from the date incentives are awarded by the authority to the disaster recovery housing project. The authority may extend a housing project’s completion deadline as described in subparagraph 48.5(3) “c”(2).

d. Upon completion of a disaster recovery housing project, a housing business shall submit all of the following to the authority:

(1) An examination of the project in accordance with the American Institute of Certified Public Accountants’ statements on standards for attestation engagements, completed by a certified public accountant (CPA) authorized to practice in this state. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA’s professional judgment, the expenditures claimed are eligible pursuant to the agreement; Iowa Code chapter 15, subchapter II, part 17; and all rules adopted pursuant to Iowa Code chapter 15, subchapter II, part 17, in all material respects. Within ten business days of a request by the authority, the housing business shall make available to the authority the documents reviewed by the CPA unless good cause is shown.

(2) A statement of the final amount of qualifying new investment for the housing project.

(3) Any information the authority deems necessary to ensure compliance with the agreement signed by the housing business pursuant to paragraph 48.10(3) “a”; the requirements of Iowa Code chapter 15, subchapter II, part 17; and these rules and rules adopted by the department of revenue pursuant to Iowa Code section 15.356.

e. Upon review of the examination as described in paragraph 48.10(3) “d,” verification of the amount of the qualifying new investment, and review of any other information submitted pursuant to subparagraph 48.10(3) “d”(3), the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use tax under Iowa Code section 15.355(2), and may issue a tax credit certificate to the housing business stating the amount of disaster recovery housing investment tax credits under rule 261—48.11(15) that the eligible housing business may claim.

The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

f. If, upon review of the examination in paragraph 48.10(3) “*d.*,” the authority determines that a housing project has incurred project costs in excess of the amount submitted in the application and identified in the agreement, the authority shall proceed as described in paragraph 48.5(4) “*f.*”

ITEM 13. Amend **261—Chapter 48**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 15.351 ~~to~~ through 15.356 and 2022 Iowa Acts, Senate File 2325, sections 7 through 13.